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Appellate Docket
No. 629

In the

Supreme Court of the United States

October Term, 1962

ALFRED J. HAUSFELD,
Petitioner,

vs.

ROBERT N. ZIEGLER,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.

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Petitioner prays that a Writ of Certiorari issue to review the final judgment of the Supreme Court of Ohio, entered in the above entitled cause on October 3, 1962.

CITATIONS TO OPINIONS BELOW

There are no written opinions in this case by any of the Ohio Courts, the Supreme Court of Ohio, the Court of Appeals of the First Appellate District of Ohio, and the Court of Common Pleas of Hamilton County, Ohio, that heard and decided this case.

JURISDICTION

The judgment of the Supreme Court of Ohio was entered of record in that Court on July 5, 1962; a timely application for rehearing was filed in the Supreme Court of Ohio, and rehearing was denied by the Supreme Court of Ohio on October 3, 1962, thereby making the judgment of the Supreme Court of Ohio final in this case. The jurisdiction of this Court is invoked under 28 USC 1257 (3) because this case involves a right, privilege and immunity under the Constitution of the United States of America.

FEDERAL QUESTION PRESENTED

Is a spouse denied Federal Due Process of Law by a state court's dismissal of his petition as being a sham and frivolous pleading in an action for damages for alienation of affections (in a state where actions for damages for alienation of affections can generally be brought) against the lawyer of the wife of said spouse in a divorce proceeding involving said spouse and his wife, wherein said spouse alleges that said lawyer willfully and maliciously advised the wife of said spouse not to effectuate a reconciliation with said spouse in order that said lawyer would be able to charge a larger attorney fee for representing the wife of said spouse in said divorce proceeding than said lawyer would have been able to charge had a reconciliation been effected between said spouse and his wife?

CONSTITUTIONAL PROVISION INVOLVED

The Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, and Article VI, paragraph 2 of the Constitution of the United States—

popularly called, "The Supremacy Clause," are involved in this case.

STATEMENT OF THE CASE

Petitioner sued the Respondent in the Court of Common Pleas of Hamilton County, Ohio, for damages for the alienation of the affections of Petitioner's wife by the Respondent; the Respondent is an attorney and counsellor at law practicing his profession in the City of Cincinnati, Ohio.

The respondent, acting both in Propria Persona and by counsel of his own choosing filed a Motion in the Common Pleas Court of Hamilton County, Ohio to strike the Petition of the Petitioner from the files of that Court on the grounds that said Petition was a sham pleading (the Petition of the Petitioner which the Court of Common Pleas of Hamilton County, Ohio, the trial Court, struck from the files as being a sham pleading is set forth in Appendix "A").

The Court of Common Pleas of Hamilton County, Ohio granted the Motion and the Petition of the Petitioner was ordered stricken from the files of that Court. Without opinion the Court of Appeals of The First Appellate District of Ohio and The Supreme Court of Ohio sustained the action of the Court of Common Pleas of Hamilton County, Ohio.

And, within the time provided by law, certiorari proceedings were instituted in this Court to reverse the judgment of the Supreme Court of Ohio and to give the Petitioner his day in Court, something which all of the Ohio Courts that have passed on this case have refused to do.

HOW FEDERAL QUESTION IS PRESENTED

Under Ohio practice, aside from the inherent power of any Court to strike any pleading from the files as being a sham and frivolous pleading, the striking of a Petition from the files as being sham and frivolous ends the case. And the party whose petition is stricken has no further recourse. And that raises a Federal Constitutional Question by the very nature of the proceedings themselves. It is well to note, and to emphasize at this point, that there is no magic formula, no talismanic phrase, or incantation that must be said, muttered, or mumbled to raise a Federal Constitutional Question. By filing a Motion to Strike the Petition of the Petitioner from the files of The Court of Common Pleas of Hamilton County, Ohio, the respondent, under Ohio practice, was admitting that everything that was alleged in said Petition was true, as a matter of fact, while at the same time denying legal liability as a matter of law. Respondent in effect was saying to the Court of Common Pleas of Hamilton County, Ohio: if you force me to go ahead and defend against this Petition, you will force me to defend against a charge on which there is no evidence in support thereof and you will thereby be depriving me of my Federal Constitutional rights; and sub silentio cited: *De Jonge* v. *Oregon*, 299 US 353, 362; *Cole* v. *Arkansas*, 333 US 196, 201; *Schware* v. *Board of Education*, 353 US 232; *U. S. ex rel Vautjean* v. *Commissioner*, 273 US 103, 106; *Moore* v. *Dempsey*, 261 US 86; *Yick Woo* v. *Hopkins*, 118 US 356, in support of his (respondent's position).

By opposing the Motion to Strike his Petition from the Files as being a sham and frivolous pleading the Petitioner, sub silentio, relied on *Jones* v. *Cunningham*, 297 Fed (2nd) 851, CCA-4th, thereby placing the Petitioner in this case in the same unseaworthy boat as the miserable wretch

whose petition for Habeas Corpus was summarily dismissed without a hearing on the merits, both actions being a deprivation of Federal Rights.

Every time a state court dismisses a case by Motion to Strike a pleading as being a sham pleading, both the 14th Amendment and the Supremacy Clause of the Federal Constitution are sitting on the bench with the State Judge who summarily dismisses such a case, and both have an equal if not more powerful voice in the decision. They must have, if the Supremacy Clause of the Federal Constitution means anything at all.

This case is unusual in that the Federal Question was initially raised by the Respondent in the Trial Court; but, once raised, it is a two edged sword that cuts both ways; and had the ruling of the trial court and of the other Ohio Courts been in favor of the Petitioner instead of the Respondent it is safe to assume that the Respondent would be making the same arguments that the Petitioner is making here.

And, *disregarding form and looking at substance*, no matter which way the Trial Court ruled on the Motion of the Respondent in that Court to strike the Petition of the Petitioner from the files, at bottom a Federal Question was raised and passed on: to deny Petitioner access to the Ohio Courts raised a Federal Constitutional question; and to force the respondent to defend against a charge on which he alleged there was no evidence, as a matter of law to sustain said charge, likewise raised a Federal Constitutional Question.

There is no question but that a Federal Constitutional question was raised; the only question before this Court is: did the Ohio Courts resolve that Federal Constitutional Question properly, and of course, the answer to that question is that the Ohio Courts were wrong, dead wrong.